

**This rule was adopted on an emergency basis effective July 1, 2005. It may be used to determine tax liability until October 28, 2005, unless the Department adopts a permanent rule prior to this date.**

NEW SECTION:

**WAC 458-20-271 Tax incentives to reduce agricultural burning. (1) Introduction.** Chapter 420, Laws of 2005, made several changes to the tax incentives provided for reducing agricultural burning of cereal grain and grass fields. These changes became effective July 1, 2005.

This section provides examples identifying a number of facts and then stating a conclusion. These examples should be used only as a general guide. The tax results of any situation must be determined after a review of all facts and circumstances.

**(2) General information common to the tax incentives to reduce agricultural burning before, on, and after July 1, 2005.**

(a) **Who is a farmer?** A "farmer" is any person engaged in the business of growing, raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product to be sold. A "farmer" does not include a person growing, raising, or producing agricultural products for the person's own consumption; a person selling any animal or substance obtained there from in connection with the person's business of operating a stockyard, slaughterhouse, or packing house; or a person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.215.

(b) **What is a cereal grain?** Cereal grains include wheat, oats, corn, barley, rye, spelt, and triticale.

(c) **What are the farmer's responsibilities with respect to the retail sales and use tax exemptions?** The farmer's responsibilities include the following.

(i) **Exemption certificate to be provided to seller.** The retail sales tax exemption provided by chapter 420, Laws of 2005 and RCW 82.08.840 is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the Department.

(A) **Certificate—On and after July 1, 2005.** For purposes of the exemption available on and after July 1, 2005 (chapter 420, Laws of 2005), the buyer must provide the seller with a completed "Farmers' Retail Sales Tax Exemption Certificate," as it relates to the exemption. A certificate to be completed by the farmer may be obtained via the Department's web site at <http://dor.wa.gov>.

(B) **Certificate—Before July 1, 2005.** For purposes of the exemption available before July 1, 2005 (RCW 82.08.840), the buyer must provide the seller with a completed "Farmers' Retail Sales Tax Exemption Certificate," or another certificate with substantially the same information.

(ii) **Maintaining records.** The law requires a farmer taking the exemption to keep records necessary for the department to verify eligibility. For example, copies of farm service agency or crop insurance records may be used to identify acreages by year as to crops grown. The records must be available for audit by the department.

(iii) **Reporting and paying tax on equipment that does not qualify for the exemption.** A farmer who takes a retail sales or use tax exemption and later finds that he or she does not meet the requirements is responsible for paying the sales tax (commonly referred to as "deferred sales tax") or use tax to the department.

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Farmers who are registered with the Department should report use tax on the combined excise tax return. Farmers who are not registered with the Department may report use tax on the Consumer Use Tax Return available via the Department's web site at <http://dor.wa.gov>.

**(d) What are the seller's responsibilities when making a tax-exempt sale?** The seller's responsibilities include the following.

**(i) Taking an exemption certificate from the buyer.** When making an exempt sale, the seller must take from the buyer a completed exemption certificate, as explained in subsection (2)(c)(i) of this section. The seller must retain a copy of the completed certificate in the seller's files. A seller who fails to take, retain, and upon request make available to the department a completed exemption certificate is liable for any uncollected retail sales tax.

**(ii) Exercising good faith.** Accepting a completed certificate documents the exempt nature of a sale under chapter 420, Laws of 2005 or 82.08.840, unless there are facts that negate the presumption that the seller relied upon the certificate in good faith. The seller is not required to substantiate that the farmer satisfies the statutory requirements of a "qualifying farmer". The seller, however, must exercise a reasonable degree of care in making a tax-exempt sale.

For example, Farmer buys a disc, equipment that is potentially eligible for the exemption. Farmer provides a completed Farmers' Retail Sales Tax Exemption Certificate to Implement Dealer. Implement Dealer reviews the certificate to ensure that it is properly completed, and retains the certificate in its files. During a later routine audit examination of Implement Dealer's records, a department auditor questions whether Farmer is eligible for the exemption. Because Implement Dealer exercised a reasonable degree of care in making the tax-exempt sale, the Implement Dealer has satisfied its responsibilities. The department will resolve any questions it has regarding Farmer's eligibility with Farmer.

**(3) Incentives to reduce agricultural burning—Periods after June 30, 2005.** Chapter 420, Laws of 2005 (2SSB 5663) provides a sales and use tax exemption for specified equipment to qualified farmers. There is also an exemption for labor and services for the construction of hay sheds for qualified farmers. Sales to qualified farmers of tangible personal property that becomes an ingredient or component of a hay shed during the course of construction also are exempt. This exemption expires January 1, 2011 and replaces the exemption previously provided by RCW 82.08.840 and 82.12.840.

**(a) Who qualifies?** Only qualified farmers are eligible for this exemption. A "qualified farmer" means a farmer as defined above who has more than fifty percent (50%) of his or her tillable acres in cereal grains and/or field and turf grass grown for seed in qualified counties.

**(i) What is a "qualified county"?** A "qualified county" is a county in Washington State where cereal grain production within the county exceeds fifteen thousand (15,000) acres. The qualified counties, as of July 1, 2005, are as follows.

Adams	Garfield	Stevens
Asotin	Grant	Walla Walla
Benton	Klickitat	Whatcom
Columbia	Lincoln	Whitman
Douglas	Spokane	Yakima
Franklin		

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(ii) **Must a farmer live in a qualified county to qualify for the exemption?** No. It is the location of the farmer's tillable acreage that determines eligibility for the exemption, not the location of the farmer's home. Thus, a farmer who has more than fifty percent of his or her tillable acres in wheat in qualified counties is a "qualified farmer" even if the farmer lives in a non-qualifying county.

(iii) **Must the seller live in a qualified county to make a tax-exempt sale?** No. Again, it is the location of the farmer's tillable acreage that determines eligibility for the exemption. Thus, an implement dealer located in a non-qualifying county may make a tax-exempt sale if the dealer takes a completed exemption certificate from the farmer and exercises a reasonable degree of care in making the tax-exempt sale.

(iv) **Does "tillable acres" include fallow and CRP acreage?** "Tillable acres" include fallow acreage, but not acreage enrolled in Conservation Reserve Program (CRP), Conservation Reserve Enhancement Program (CREP), or similar program under which the farmer agrees not to farm the land. Fallow acreage will be considered "in cereal grains and/or field and turf grass grown for seed" if in the following year it is planted with a cereal grain and/or field or turf grass grown for seed.

(v) **Examples.**

(A) **Example 1.** Farmer has 10,000 acres within a qualified county. In Year 1, 4,000 acres are planted in wheat, 2,000 acres are fallow, and 4,000 acres are enrolled in the CRP. In Year 2, the 2,000 acres left fallow in Year 1 are planted in wheat.

Farmer is a "qualified farmer" in Year 1. Farmer has 6,000 tillable acres (10,000 total - 4,000 CRP), 100% of which is located in a qualified county and in a cereal grain.

(B) **Example 2.** Farmer has 3,000 tillable acres within a qualified county and 4,000 acres within a nonqualified county. For purposes of determining whether Farmer is a qualifying farmer, only the 3,000 tillable acres within the qualified county is considered.

(b) **What equipment qualifies?** The law specifically identifies hay sheds and the following equipment as eligible for the exemption.

Bale Handlers	Minimum-till drills	Shredders
Balers	Mowers	Sprayers
Chisels	No-till drills	Swathers
Cultivators	Plows	Tractors of 250 engine hp and over
Discs	Power rakes	Transplanters
Harrows		

The following combine components only:

Straw choppers	Chaff spreaders	Stripper Headers
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(i) **What is a hay shed?** For the purposes of this exemption, a hay shed is a structure used to store plant residue, such as straw.

(ii) **What is a bale handler?** For purposes of this exemption, a bale handler is equipment specifically designed to load, stack, retrieve, and/or transport bales.

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(iii) **Are hardware kits used to attach qualifying equipment to non-qualifying equipment eligible for the exemption?** Yes, provided the kit is necessary to attach exempt equipment to nonexempt equipment and the kit and exempt equipment are purchased together.

(iv) **Do tractors of less than 250 hp qualify for exemption if they are needed to pull or power eligible equipment?** No. The law specifically exempts only tractors of two hundred fifty horse power (hp) or more. Tractors of less than two hundred fifty hp are not eligible for the exemption, even if used to pull an eligible piece of equipment (e.g., a disc) or if attachment of an eligible piece of equipment is required (e.g., some bale handlers). For purposes of this exemption, horse power is measured in engine horse power.

(d) **What doesn't qualify for the retail sales and use tax exemption?** The following are examples of items or services that do not qualify for this exemption, even if purchased or used by a qualifying farmer:

- (i) Repairing, cleaning, decorating, altering, or improving of tax exempt equipment;
- (ii) Items that becomes an ingredient or component (e.g., repair part) of tax exempt equipment;
- (iii) Repairing, cleaning, altering, or improving of hay sheds after construction;
- (iv) Materials incorporated into hay sheds after construction; and
- (v) Construction of sheds used for storage of farm or other equipment.

(4) **Incentives to reduce agricultural burning—Periods before July 1, 2005.** This information was previously provided in WAC 458-20-210.

(a) **B&O tax credit to encourage alternatives to field burning.** Persons who qualify for a sales or use tax exemption under RCW 82.08.840 or 82.12.840 (machinery, equipment, or structures that reduce emissions from field burning) also qualify for a B&O tax credit. RCW 82.04.4459. The amount of the credit is equal to fifty percent of the amount of costs expended for constructing structures or acquiring machinery and equipment for which an exemption was taken under RCW 82.08.840 or 82.12.840. (See subsection (6)(l) of this rule for information about the sales and use tax exemptions provided by RCW 82.08.840 and 82.12.840.) No application is necessary for the credit. Persons taking the credit must keep records necessary for the department to verify eligibility for the credit. This credit is subject to the following limitations:

- (i) No credit may be taken in excess of the amount of B&O tax that would otherwise be due;
- (ii) Credit may not be carried over to subsequent calendar years;
- (iii) The credit must be claimed by the due date of the last tax return for the calendar year in which the payment is made;
- (iv) Any unused credit expires;
- (v) Refunds will not be given in place of credits; and
- (vi) The credit may not be claimed for expenditures that occurred before March 22, 2000.

(b) **Machinery, equipment, and structures used to reduce emissions from field burning.** RCW 82.08.840 and 82.12.840 provide a sales and use tax exemption for certain property used to reduce field burning of cereal grains and field and turf grass grown for seed, or to reduce air emissions resulting from such field burning. The retail sales tax exemption applies to sales of machinery and equipment, and to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of

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structures or eligible machinery and equipment, and to sales of tangible personal property that becomes an ingredient or component of eligible structures or eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection are met. The sales tax exemption is effective March 22, 2000. The use tax exemption applies to the use of machinery and equipment, and of tangible personal property that becomes an ingredient or component of eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection are met. This use tax exemption is also effective March 22, 2000. The use tax exemption also applies to the use of services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, if all of the requirements for the exemption are met. This component of the use tax exemption is effective June 1, 2002.

(i) **Majority use requirement.** To qualify for an exemption, the machinery, equipment, or structure must be used more than half (50%) of the time:

(A) For gathering, densifying, processing, handling, storing, transporting, or incorporating straw or straw-based products that results in a reduction in field burning of cereal grains and field and turf grass grown for seed; or

(B) To decrease air emissions resulting from field burning of cereal grains and field and turf grass grown for seed.

(ii) **Examples.** The following examples illustrate this exemption:

(A) Farmer cultivates turf grass. Farmer purchases spray equipment. As an alternative to field burning, the fields in which the spray equipment is used must be sprayed five times instead of twice. The use of the spray equipment meets the requirement that the equipment be used more than half of the time to decrease air emissions resulting from field burning; therefore, the purchase of the spray equipment is exempt.

(B) Farmer, who performs custom baling, purchases a new baler for use in baling hay and straw. The purchase of the baler is exempt if it will be used more than half of the time to bale straw, which results in a reduction in field burning.

(C) Farmer purchases a new combine for use in harvesting wheat. In addition to cutting the stalks, separating the kernels from the chaff, and unloading the kernels, the combine also chops the residual chaff before discharging it onto the field. While the need for field burning may decrease because the smaller residue more readily decomposes, the purchase of the combine does not qualify for the exemption. The combine is not used more than half of the time to decrease air emissions from field burning.